IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.293 OF 2006

Mr Shrinivas Ramkrishna Thakur, .. Petitioner
Vs
Mr Shankar Narayan Gaikwad & Ors .. Respondents.

Mr I.R.Kulkarni, for the petitioner.
Mr Prakas N Wagh, for the respondents.

CORAM : D.B.BHOSALE,J.
DATE : 05.09.2006

PC:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. The learned counsel, waives service for the respondents. By consent, rule is heard forthwith.

3. By this writ petition, the petitioner has impugned the order dated 19.11.2005 passed by the trial Court directing the petitioner to deposit the deficit court fee of Rs.17,145/- within 15 days from the date of the order as per the Order 7, rule 11(b) of the Code of Civil Procedure. The suit was filed in March, 1996 and it was valued at Rs 29,84,730/-. The trial Court, while passing the impugned order, seems to have taken into consideration the amendment of the Bombay Court-Fees Act,1959 in part, which provides that the fees increase at the rate of Rupees 80 for every Rupees 5,000 or part

thereof upto Rs.1,00,000 and over Rs.1,00,000 at the rate of Rupees 100 for every rupees 10,000 or part thereof. However, he missed that the maximum fee provided prior to 1996 Amendment was Rupees 15,000. Mr Wagh, learned counsel for the respondent, could not and did not dispute this position and has fairly stated that the trial court did commit an error in calculating the court fee as applicable prior to 1996 Amendment. The Bombay Court-fees (Amendment) Act, 1996 (Mah.23 of 1996) was brought into force on 21.2.1997 whereas the suit was filed in March, 1996. Old increase in the Bombay Court-fees Act, 1959 prior to the 1996 Amendment clearly provides maximum fee of Rs.15,000/-. Therefore, in any case, the petitioner as on the date of filing of the suit was not liable to pay more than Rs.15,000/- fees. In the circumstances, this writ petition is allowed and the order dated 19.11.2005 impugned in the present petition is quashed and set aside. Since the petitioner has already paid the court fees of Rs.15,000/-, the trial Court may proceed to decide the suit on merits in accordance with law. Rule is disposed of.

(D.B.BHOSALE,J.)